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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/652,011	08/29/2003	William Hugo Geissele	3836-011	9682
22440	7590	04/28/2005	EXAMINER	
GOTTLIEB RACKMAN & REISMAN PC 270 MADISON AVENUE 8TH FLOOR NEW YORK, NY 100160601			MCCARRY JR, ROBERT J	
		ART UNIT	PAPER NUMBER	
		3617		

DATE MAILED: 04/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/652,011	GEISSELE ET AL.
	Examiner Robert J. McCarry, Jr.	Art Unit 3617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 24 January 2005.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-30 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) 22,23 and 26-28 is/are allowed.

6) Claim(s) 1-6,9-11,14-21,24,25,29 and 30 is/are rejected.

7) Claim(s) 7, 8, 12 and 13 is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

- Certified copies of the priority documents have been received.
- Certified copies of the priority documents have been received in Application No. _____.
- Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____

4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____

5) Notice of Informal Patent Application (PTO-152)

6) Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6, 9-11, 14-17, 21, 24, 25, 29 and 30 are rejected under 35 U.S.C. 102(b) as being anticipated by Reynolds et al (US 4,047,663).

Reynolds et al discloses an assembly for supporting a rail comprised of an abrasion plate 24 having an upper surface and constructed to fit on a railroad tie, a rail pad 28 having a lower surface and constructed to fit on the abrasion plate, with the lower surface of the rail pad 28 contacting the upper surface of the abrasion plate 24. Note that the rail pad 28 is shown to be on both the top and bottom of the abrasion plate. However, the top rail pad is the rail pad that reads on the instant claims, since it is on top of the abrasion plate. The bumps of abrasion plate 24 are slightly smaller than the depressions of the rail pad 28, which allows for some adjustment during construction of the assembly. The bumps are uniformly positioned on either side of the depression and the rail. Both layers are constructed to support a railroad rail 10 and are sealed together from the environment. This layering arrangement is shown in figure 2. The assembly also has a plurality of clips; also interpreted to be couplings, 16, and 18 arranged to secure the rail 10 on top of the rail pad 28. The abrasion plate 24 and rail pad 28 are locked together by a locking mechanism in the form of bumps and depressions on the

respective layers. The abrasion plate 24 has a plurality of bumps on the top surface that mate with depression on the lower surface of the rail pad 28. The abrasion plate 24 has a lower surface with depressions that match the contours of the bumps on the top surface. These depressions on the lower surface of the abrasion plate 24 allow for passage of a portion of the clips 16, 18 to secure the rail 10 to the assembly. The bumps on the top surface of the abrasion plate form a depression in the middle of the plate for accommodating the rail 10, this central depression is off set from the depression on the lower side of the abrasion plate in a lateral direction. The clips 16, 18, or couplings have a projection that extends into a hole in the assembly. The hole, as interpreted by Examiner can be seen in the cross section of figure 2. As shown at the right of the figure, the layers are shown with a portion of the clip adjacent to the abrasion plate. At the left of the figure shows a portion of the clip inserted into a hole in the base of the assembly. The Examiner has interpreted the portion of the clip remaining outside of the assembly and adjacent to the rail 10 to be a head portion of the clip. Figure 1 shows the curved head portion of the clip, which is larger than the hole the projection portion of the clip is inserted into. Clip supports in the form of bolts are anchored through the pad assembly into the tie. The bolts anchor the clips and support them so as to prevent them from moving.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 18-20 rejected under 35 U.S.C. 103(a) as being unpatentable over Reynolds et al.

Reynolds et al discloses an assembly for supporting a rail as described above. Reynolds et al also discloses a method for installing the assembly on a rail tie by providing an abrasion assembly having a bottom surface formed with a plurality of irregularities. These irregularities are described above as bumps and depressions. However, Reynolds et al does not disclose the step of depositing an epoxy on the tie before placing the support assembly. It is well known in the art to use an epoxy as an adhesive for added strength and support. It would have been obvious to one of ordinary skill to have applied and uncured epoxy to the rail tie and allowing it to fill the depression on the assembly in order to increase the strength of the assembly thereby allowing it to properly support rails under weight of the continuous passage of rail vehicles.

Allowable Subject Matter

Claims 7, 8, 12, 13 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 22, 23 and 26-28 are allowed.

Response to Arguments

Applicant's arguments filed 1/24/2005 have been fully considered but they are not persuasive. Applicant argues that the prior art does not disclose bumps or depressions. As stated in the explanation above, the bumps are on the top surface of the abrasion plate on either side of the rail. The bumps are positioned so as to form a depression for accepting the rail. Applicant also argues that the plate and pad are not removable in the prior art. Since the pad and the plate of the prior art are separate pieces that are assembled together to form the assembly it is understood that they would be removable from each other. The applicant also argues that the clip merely couples the rail to the pad. Since the clip is in contact with the plate and is formed to be inserted into a portion of the plate it is understood that the clip would hold down the rail as well as hold the parts of the pad and plate assembly together.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Steimen (US 3,311,331), and van Goubergen (US 5,330,165) both disclose types of layered vibration absorbing structures. Reynolds et al (US 4,316,578) and McQueen (US 4,648,554) both disclose types of rail plate and rail pad structures.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert J. McCarry, Jr. whose telephone number is (703) 305-0581. The examiner can normally be reached on Monday through Friday 8:00am to 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, S. Joseph Morano can be reached on (703) 308-0230. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

RJM
April 20, 2005



R. M. C.
April 20, 2005
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